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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

DONNA A. RATLIFF

CIVIL ACTION NO. 05-1194

VERSUS

JUDGE DOHERTY

BAY INC. OF TEXAS
D/B/A BAY OFFSHORE, INC.

MAGISTRATE JUDGE METHVIN

ORDER

This Court's ORDER dated May 14, 2007 [Doc. 41] deferred ruling on the pending Motion for Summary Judgment [Doc. 32] until after the parties contacted the Trustee with notice of this litigation.¹ Thereafter, defendant submitted a letter from the Trustee to counsel stating he would not object to the debtor pursuing this case, "provided she (a) applied any net recovery to Chapter 13 Plan, and (b) increases the dividend to unsecured creditors up to 100%, subject to such net recovery." [Doc. 46, p.6] Although the parties have never provided any document to this Court stating whether or not plaintiff agreed to those terms, this Court's independent research of the docket sheet in the bankruptcy matter reveals that Court entered an Order on July 3, 2007 stating:

1. That Donna Ratliff may pursue the civil action captioned *Donna Ratliff v. Bay Offshore, Inc.* Now proceeding in the United States District Court, Western District of Louisiana, Lafayette Division as civil action number 05-1194 before the Honorable Rebecca F. Doherty, United States District Judge; and,
2. That any net recovery therefrom be applied to the Debtors' confirmed Chapter 13 plan; and,
3. That the Debtors increase the dividend to the filed and allowed unsecured creditors up to 100% subject to such net recovery.

¹Plaintiff in this matter has filed for bankruptcy in the Southern District of California. [See Doc. 40 for further detail.]

This Court thus presumes this matter is ripe to proceed.

IT IS HEREBY ORDERED the Motion for Summary Judgment [Doc. 32] is **DENIED** for failure to carry the burden of proof, without prejudice to defendant's right to refile at a later date. Should defendant choose to refile the Motion for Summary Judgment, it is to concentrate on the substantive aspects of its motion (as opposed to the procedural aspects, as was the case with the previous motion) and focus on United States Supreme Court and Fifth Circuit jurisprudence. The same instruction applies to plaintiff's counsel should he choose to oppose the motion.

IT IS FURTHER ORDERED counsel are to keep this Court advised as to any action of the bankruptcy court related to the matter before this court.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 27 day of August, 2007.


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE